UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

AUG 23 2012

PROCUREMENT MEMORANDUM 2012-07

ACTION

MEMORANDUM FOR: BUREAU PROCUREMENT OFFICIALS
HEADS OF CONTRACTING OFFICES

FROM: Barry E. Berkowitz
Senior Procurement Executive
and Director for Acquisition Management

SUBJECT: FAR Class Deviation: Providing Accelerated Payment to Small Business Subcontractors

Background
The Office of Management and Budget (OMB) has issued Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors, http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-16.pdf , which directs that agencies should, to the full extent permitted by law, temporarily accelerate payments to all prime contractors, in order to allow them to provide prompt payments to small business subcontractors. While this temporary one year policy is in effect, agencies shall encourage prime contractors to pay small business subcontractors on an accelerated timetable to the maximum extent practicable.

Purpose
The purpose of this Procurement Memorandum is to implement OMB Memorandum M-12-16 via a Class Deviation to the Federal Acquisition Regulation (FAR). The deviation provides for the use of Clause 52.232-99, Providing Accelerated Payment to Small Business Subcontractors (DEVIATION)(AUG 2012) and is issued in accordance with Civilian Agency Acquisition Letter 2012-03, dated August 16, 2012.

Applicability
This Class Deviation applies to all DOC solicitations and resultant contracts.

Required Actions
Effective immediately, contracting officers shall use Clause 52.232-99, Providing Accelerated Payment to Small Business Subcontractors (DEVIATION)(AUG 2012) to require prime contractors to pay small business subcontractors on an accelerated timetable to the maximum extent practicable. Contracting officers shall insert

Clause 52.232-99 in all new solicitations and resultant contracts and, to the extent feasible, modify existing solicitations to insert the clause. Contracting officers may amend existing contracts to insert this clause in accordance with FAR 1.108(d).

The Department of Commerce will provide accelerated payments to all prime contractors after receipt of a proper invoice and all proper documentation while also maintaining necessary internal controls.

Effective Date
The deviation is effective immediately and remains in effect until it is incorporated in the Federal Acquisition Regulation or the Commerce Acquisition Regulation or is otherwise rescinded.

The point of contact for this matter is Nancy Barrere, who may be reached at 202-482-5519, or nbarrere@doc.gov.

Attachment
(D&F and Clause)

cc: Acquisition Community
Acquisition Council
CFO Council

Attachment
Procurement Memorandum 2012-07

Class Deviation from the Federal Acquisition Regulation (FAR):
Use of Clause 52.232-99
Providing Accelerated Payment to Small Business Subcontractors
(DEVIATION)(AUG 2012)

Determination and Findings

Pursuant to Civilian Agency Acquisition Council (CAAC) Letter 2012-13, dated August 16, 2012, Subject: Class Deviation from the Federal Acquisition Regulation (FAR) to Implement Office of Management and Budget (OMB) Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors, the Department of Commerce has authorized a Class Deviation from the FAR to require the use of Clause 52.232-99, Providing Accelerated Payment to Small Business Subcontractors (DEVIATION)(AUG 2012).

Findings

OMB Policy Memorandum M-12-16 directs that agencies should, to the full extent permitted by law, temporarily accelerate payments to all prime contractors, in order to allow them to provide prompt payments to small business subcontractors. While this temporary one year policy is in effect, agencies shall encourage prime contractors to pay small business subcontractors on an accelerated timetable to the maximum extent practicable. OMB worked with the FAR Council to develop the attached clause to require prime contractors to pay small business subcontractors on an accelerated timetable to the maximum extent practicable. Until the FAR or the Commerce Acquisition Regulation (CAR) are revised or the policy is rescinded, a Class Deviation is being issued to require use of Clause 52.232-99, Providing Accelerated Payment to Small Business Subcontractors (DEVIATION)(AUG 2012).

Determination

In accordance with FAR 1.404, I hereby authorize a Class Deviation from FAR to require the use of Clause 52.232-99, Providing Accelerated Payment to Small Business Subcontractors (DEVIATION)(AUG 2012). Contracting Officers must insert the clause in all solicitations and resultant contracts. Consultation for this Class Deviation is granted under CAAC Letter 2012-13. This Class Deviation shall remain in effect until cancelled or superseded by a revision to the FAR or the CAR.

Barry Berkowitz

Barry E. Berkowitz
Senior Procurement Executive and
Director for Acquisition Management

8/23/12
Date

52.232-99, Providing Accelerated Payment to Small Business Subcontractors (DEVIATION)

The Contracting Officer shall insert the following clause in all solicitations and resultant contracts.

PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS (DEVIATION)(AUG 2012)

This clause implements the temporary policy provided by OMB Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors, dated July 11, 2012.

(a) Upon receipt of accelerated payments from the Government, the contractor is required to make accelerated payments to small business subcontractors to the maximum extent practicable after receipt of a proper invoice and all proper documentation from the small business subcontractor.

(b) Include the substance of this clause, including paragraph (b), in all subcontracts with small business concerns.

(c) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.